



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Amended:	06/22/10	Bill No:	SB 231
Tax:	Generator Fee	Author:	Lowenthal
Related Bills:			

This analysis will only address the bill's provisions which impact the State Board of Equalization (Board).

BILL SUMMARY

This bill would increase the base rate for the generator fee and revise the agency responsible for, and the basis of, the annual rate adjustments.

SUMMARY OF AMENDMENTS

Since the previous analysis, this bill was amended to remove the provisions that would have replaced the existing tiered fee structure for generation of hazardous waste with a simple rate-per-ton fee.

CURRENT LAW

Under current law, Health and Safety Code Section 25205.5 requires each generator who generates five tons or more of hazardous waste to pay a generator fee for each generator site for each calendar year unless the generator has paid a facility fee¹ or the waste is exempt.

Exemptions from the generator fee include used oil removed from motor vehicles that is recycled by a recycler permitted by the Department of Toxic Substances Control (DTSC); waste that is generated, recycled, and used onsite and not transferred offsite at any time; and aqueous waste treated in a treatment unit operating, or which subsequently operates, under a permit by rule, conditional authorization, or conditional exemption. However, hazardous waste generated by the treatment unit is subject to the generator fee.

The generator fee is adjusted annually by the Board to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the California Consumer Price Index (CCPI). The adjusted base rate set by the Board for the 2010 calendar year is \$3,949, which is imposed as follows:

Less than 5 tons		\$0
5 – 24.9 tons	5 percent of the base rate	197.00
25 – 49.9 tons	40 percent of the base rate	1,580.00
50 – 249.9 tons	100 percent of the base rate	3,949.00
250 – 499.9 tons	5 times the base rate	19,745.00

¹ The facility fee applies to an owner or operator of a site that is permitted by the Department of Toxic Substances Control to treat, store, or dispose of hazardous waste.

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Waste Generated	Amount of Base Rate	Fee
500 – 999.9 tons	10 times the base rate	39,490.00
1,000 – 1,999.9 tons	15 times the base rate	59,235.00
2,000 – more tons	20 times the base rate	78,980.00

The annual fee is paid to the Board and deposited into the state's Hazardous Waste Control Account (Account).

PROPOSED LAW

This bill amends Health and Safety Code Section 25205.5 to substitute the 1997 base rate of \$2,748 for a 2010 base rate in the amount of \$3,949. The DTSC would be authorized to adjust the base rate annually to reflect increases or decreases in the cost of implementing programs supported by the Account. Increases in the base rate are limited to a maximum of five percent from one calendar year to another and would be prohibited in any calendar year in which there is an account reserve balance greater than one-third of the annual generator fee revenue generated or in which there is an outstanding loan from the Account to the General Fund.

The bill also makes other non-substantive, technical corrections within Section 25205.5.

This bill would become effective January 1, 2011.

BACKGROUND

In enacting Senate Bill 1222 (Ch. 638, Stats. 1995), the Legislature required the Secretary for Environmental Protection to convene a task force to review the existing hazardous waste fee structure and provide recommendations to the Legislature no later than January 1, 1997. The task force was directed to propose a new fee system for providing financial support to California's hazardous waste and hazardous substance regulatory programs which would: (1) provide protection for public health and safety and the environment; (2) provide adequate funding to ensure remediation of contaminated sites; (3) not impose a disproportionate burden on any sector of California's economy; (4) provide a level of funding that enables the DTSC to appropriately implement programs authorized by the Legislature in a manner consistent with the objectives of those programs; and (5) provide a means of funding consistent with the objectives of the DTSC's programs.

Senate Bill 660 (Ch. 870, Stats. 1997), the Environmental Cleanup and Fee Reform Act of 1997, enacted many of the recommendations of the Fee Reform Task Force by amending various sections of the Health and Safety Code. Among its provisions, that bill amended Section 20205.5 to decrease the generator fee to its current base rate of \$2,748. It was estimated at the time that the revenue losses resulting from the decreased generator fee, various repealed fees, and implementation of fees-for-services would be offset by an increase in the environmental fee, which was imposed on corporations at that time, based on its number of employees.

COMMENTS

1. **Sponsor and purpose.** The author is sponsoring this measure to provide a more stable source of funding for the DTSC's programs.

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2. **Summary of amendments.** The **June 22, 2010 amendments** remove the provisions that would have replaced the existing tiered fee structure for generation of hazardous waste with a simple rate-per-ton fee, and reinstate the existing fee structure. The amendments also increase the generator fee base rate and revise the basis, and the agency responsible, for the annual base rate adjustments.
3. **Appropriate notice of rate adjustment to the Board.** This bill changes the agency responsible for annual generator fee rate adjustments from the Board to the DTSC. Since the Board would no longer be making rate adjustments, the bill should include a date by which the DTSC notifies the Board of any rate adjustment. The Board would need two months to properly implement any adjustment to the rate, which includes revising computer programming, and revising returns and publications. To provide sufficient implementation time to the Board, the following language is suggested:

25205.5. (d) The base rate established pursuant to subdivision (b) is the base rate for the 2010 calendar year and the department may adjust the base rate annually to reflect increases or decreases in the cost of implementing programs supported by the Hazardous Waste Control Account. The department shall notify the Board of the adjusted base rate no later than November 1, which shall be effective on and after January 1 of the next succeeding calendar year. There shall not be an increase of more than 5 percent from one calendar year to another. There shall not be an increase in the base rate in any calendar year in which there is an account reserve balance greater than one-third of the annual revenue generated pursuant to this section or in which there is an outstanding loan from the account to the General Fund.

COST ESTIMATE

Enactment of this provision would not impact the Board's administrative costs.

REVENUE ESTIMATE

The bill specifies a 2010 base fee rate that is identical to the currently adjusted rate for the 2010 calendar year, which therefore results in no revenue gain or loss. The annual adjustments to the rate would no longer be required, nor would they be measured by the Consumer Price Index, but rather the cost of implementing programs supported by the Account. Since the cost of implementing programs supported by the Account is unknown, a revenue estimate could not be prepared.

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